



**PUBLIC HEARING  
BEFORE THE GALLATIN CANYON / BIG SKY  
PLANNING AND ZONING COMMISSION**

**EMPLOYEE HOUSING AT THE  
WHITEWATER INN (BIG SKY  
RESORT / BOYNE)**

**FINDINGS OF FACT AND ORDER**

PURSUANT TO the Gallatin Canyon / Big Sky Zoning Regulation, which was adopted on July 30, 1996, and amended thereafter, and after legal notice, a public hearing was held before the Gallatin Canyon / Big Sky Planning and Zoning Commission ("Planning and Zoning Commission") in Bozeman, MT on June 14, 2007. The purpose of the hearing was to hear an appeal by Patrick and Carol Collins regarding a March 5, 2007 decision on employee housing at the Whitewater Inn by the Code Compliance Specialist, and to affirm, modify, or reverse that decision

THEREFORE, after hearing and considering all public testimony, the Gallatin Canyon / Big Sky Planning and Zoning Commission makes the following Findings of Fact:

**FINDINGS OF FACT**

1. The Gallatin Canyon / Big Sky (GC/BS) Zoning Regulation was adopted on July 30, 1996, and amended thereafter.
2. The Whitewater Inn is located in the C-I (Commercial & Industrial Mixed Use) District of the GC/BS Zoning District. Employee housing, as defined by the GC/BS Zoning Regulation, is not a permitted or conditional use in the C-I District.
3. Section 6.13 defines Boarding/Rooming House as, "A residential structure that provides lodging with or without meals, is available for permanent or seasonal occupancy, and which makes no provisions for cooking in any of the rooms occupied by paying guests."
4. Section 6.34 defines Dormitory as, "A structure which provides rooms for individuals or groups. Dormitories do not include individual kitchen facilities."
5. Section 6.38 defines Employee Housing as, "Residential units *restricted by covenant* for use by persons employed within the GC/BS Planning and Zoning District, and their families. Employee housing includes dormitories, boarding/rooming houses, and dwelling units.
6. Section 6.52 defines Hostel as, "A structure providing dormitory-style, short-term lodging."

7. Section 6.53 defines Hotel as, “A facility offering short-term lodging on a *daily rate* to the general public and providing additional services, such as restaurants, entertainment, meeting rooms and recreational facilities.”
8. Margot Barg, representing Patrick and Carol Collins, testified that employee housing is not a permitted or conditional use in the C-I District of the Gallatin Canyon / Big Sky Zoning District. Employee housing is allowed in the Community Commercial (C-C) and Resort Districts.
9. Margot Barg stated that Boyne told the Madison County Planning Board that they purchased the Whitewater Inn to provide limited, periodic housing (124 beds). The Big Sky Resort web site offers employee housing at Whitewater Inn, and talks about rent. Employees must provide their own bedding and towels, and only pay \$12.00 per night. She references Susan Swimley’s letter, which states that 50 of 62 rooms are allocated for employees. Some employees stay months at a time, and this is not short-term use.
10. Margot Barg testified that if employees are using the rooms at Whitewater Inn, then the room are not available to the public, and Big Sky Resort is not meeting the intent of the C-I District.
11. Margot Barg testified that employee housing must first be allowed before the use can be restricted by covenant. She stated that employee housing is not allowed, and the appellants request a reasonable timeframe for compliance. She also stated that a text amendment would provide a time for all the neighbors to let the matter be heard.
12. Carol Collins testified that the reason the definition of employee housing in the zoning regulation restricts use to employees of the Gallatin Canyon / Big Sky Zoning District is because the drafters felt they could not make provisions for Madison County, and they felt it was important for Madison County employees to be close to where they work (i.e. on the mountain in Madison County), and that Madison County needs to address their own employee housing issues.
13. Carol Collins stated that the zoning regulation addressed affordable housing by allowing employee housing elsewhere in the Zoning District (C-C and Resort Districts). Maybe times have changed, and employee housing is needed in the C-D District, but if that is the case, Ms. Collins stated that the use should go through the text amendment process. Employee housing in the C-I District is a violation of the GC/BS Zoning Regulation right now.
14. Becky Pape (a member of the Advisory Committee) testified that hotels were purposefully excluded from the C-I District when the GC/BS Zoning Regulation was written. The intent was to place hotels (such as a Ritz Carlton) on the mountain, and place motels (such as a Super 8) in

Gallatin Canyon. She stated that the Comfort Inn is a motel even though doors open to an interior lobby.

15. Ms. Pape stated that the covenant requirement in the definition of employee housing was specific to tax credit housing, and is the world's most stupid definition of employee housing.
16. Ms. Pape stated that employee housing is not a permitted or conditional use in the C-I District. A zone text amendment that lists employee housing as a conditional use gives the neighbors some control over the issues that arise from employee housing (beer cans and bread hanging from the window and junk vehicles in the parking lot). With a Conditional Use Permit, reasonable conditions may be set. Ms. Pape reluctantly recommended that the Code Compliance Specialist decision be affirmed because she did not want to throw people out on the street.
17. Jerry Scott (a member of the Advisory Committee) testified that he does not believe Whitewater Inn, as it is currently being used, constitutes employee housing pursuant to the definition in the zoning regulation. Mr. Scott stated that the Commission is bound to look at the GC/BS Zoning Regulation. In this case, employee housing must be restricted by covenant (notwithstanding the intent of the language as testified by Ms. Pape). The use is currently not restricted by covenant. Also, the regulation requires inhabitants to be employees of the GC/BS Zoning District. Currently, Big Sky Resort allows Madison County employees to reside at Whitewater inn. The use does not fit the GC/BS Zoning Regulation definition of employee housing. Mr. Scott believed the Code Compliance Specialist's argument to be stronger than the appellant's. However, Mr. Scott felt that Boyne should be required to participate in a zone text amendment that reviews pertinent definitions.
18. Vicki Nordahl testified that she was concerned how rooms are distributed to employees. She also stated that you may no longer pay \$1.00 to let kids use the pool. Just because the definition requires covenant restrictions, the use is not reasonable, and there are other areas in Big Sky that allow employee housing.
19. Susan Swimley, representing Big Sky Resort / Boyne, stated that the rooms at Whitewater Inn are rented at a daily rate. The current use is not employee housing because it does not meet the employee housing definition in the GC/BS Zoning Regulation. The use is not restricted by covenant, and the employees work in Madison County. If an employee checks out, they do not pay for a room. Meeting rooms and the pool remain open to the public.
20. Ms. Swimley stated that Richard Moss, the former owner, rented rooms to his employees.

21. Ms. Swimley stated that who occupies the rooms is not the Planning and Zoning Commission's issue, nor are the amenity packages offered by the hotel, nor the length of stay. People have not stayed for free. Every person staying at Whitewater Inn pays a resort tax. Madison County does not receive a tax benefit that should go to Gallatin County.
22. Ms. Swimley stated that the Planning and Zoning Commission must consider the GC/BS Zoning Regulation definitions, not Title 50, which pertains to public health and safety.
23. Ms. Swimley stated that the average occupancy per room for employees is 2.5, and that the employees decide whom to share a room with.
24. Ms. Swimley stated that there have not been any instances of safety issues. All guests are required to follow hotel rules. The purpose of the hotel is to make money. They do not want the use to deteriorate (i.e., there will be no beer cans hanging out the window).
25. Ms. Swimley admitted that the definitions are not clear, and stated that Big Sky Resort will actively engage in a zone text amendment.
26. Ms. Swimley stated that a construction worker staying in Big Sky while working could negotiate a room rate with Whitewater Inn.
27. Margot Barg, representing Carol and Pat Collins, stated that the evidence suggests the use of Whitewater Inn is employee housing. If the Code Compliance Specialist decision is affirmed, she stated that Whitewater Inn could be occupied 100 percent by employees.
28. The GC/BS Planning and Zoning Commission, after consideration of public testimony and in board discussion, concurred with the findings in the Code Compliance Specialist staff report and incorporated them by reference.
29. The GC/BS Planning and Zoning Commission, after consideration of public testimony and in board discussion, stated that Jerry Scott presented critical information. The employee housing definition requires the use to be restricted by covenant, and requires the employees to be employed within the Gallatin Canyon / Big Sky Planning and Zoning District.
30. The GC/BS Planning and Zoning Commission, after consideration of public testimony and in board discussion, stated that the terms "hotel" and "motel" could be interchangeable, even though the zoning regulation distinguished between the two. The charge is a daily rate. It is impossible for a hotel owner to say or control who the guests will be.
31. The GC/BS Planning and Zoning Commission, after consideration of public testimony and in board discussion, agreed that the GC/BS Zoning Regulation definitions of employee housing and

other related definitions need to be cleaned up, and that a text amendment should be developed that clarifies the issues from today's hearing.

32. The GC/BS Planning and Zoning Commission, after consideration of public testimony and in board discussion, stated that a cease and desist order on employee housing would only apply to employees working in the GC/BS Zoning District, and would be difficult to enforce.
33. The GC/BS Planning and Zoning Commission, after consideration of public testimony and in board discussion, found that the definition of employee housing requires that residential structure be restricted by covenant for that use. Big Sky Resort has not established covenants specifying the use of Whitewater Inn as employee housing. The zoning definition of employee housing is very narrow, and Big Sky Resort's current use of Whitewater Inn does not fit within the GC/BS Zoning Regulation definition.
34. The GC/BS Planning and Zoning Commission, after consideration of public testimony and in board discussion, found that Big Sky Resort is operating Whitewater Inn in compliance with the GC/BS Zoning Regulation. While Big Sky Resort is clearly using the Whitewater Inn to provide seasonal accommodations for its employees, the GC/BS Zoning Regulation does not specifically address the issues the appellants raise.
35. Any findings contained in the live recording of the appeal hearing dated June 14, 2007 are hereby incorporated in these findings of fact and order.
36. A motion was made by Commissioner White, and seconded by Commissioner Mills to affirm the March 5, 2007 decision by the Code Compliance Specialist. The motion included a condition that requires Boyne / Big Sky Resort to make reasonable efforts to work with the Planning Department and the Advisory Committee to develop a zone text amendment that revises relevant definitions (employee housing, hotel, motel, dormitory, boarding/rooming house, hostel), and adds employee housing as a conditional use in the C-I district. The Commission hopes that Big Sky Resort / Boyne, having participated in the text amendment process, will voluntarily go through the CUP process if an amendment is approved. The Motion was approved by a four to two (4:2) vote (Commissioner Murdock and Commissioner Trygstad opposed).

## **ORDER**

The Gallatin Canyon / Big Sky Planning and Zoning Commission hereby orders:

1. The March 5, 2007 decision of the Code Compliance Specialist is affirmed.
2. Big Sky Resort / Boyne shall participate in a text amendment process that clarifies relevant definitions (employee housing, boarding/rooming house, dormitory, hotel, motel, etc.) and adds employee housing as a conditional use in the C-I District.

### **Gallatin Canyon / Big Sky Planning and Zoning Commission**

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Kimberly Buchanan, Chairman

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Date

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William A Murdock, Member

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Date

\_\_\_\_\_  
R. Stephen White, Member

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Date

Excused

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Joe P. Skinner, Member

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Date

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Anne Trygstad, Member

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Date

\_\_\_\_\_  
Beth Horn, Member

\_\_\_\_\_  
Date

\_\_\_\_\_  
Charlotte Mills, Member

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Date